

House File 2449 - Introduced

HOUSE FILE _____
BY FORD

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to consumer mortgage protection, conferring a
2 mortgage broker duty of agency, specifying prohibited actions
3 by lenders, mortgage bankers, and mortgage brokers, and
4 providing penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 6375HH 82
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1 1 DIVISION I
1 2 MORTGAGE BROKER DUTY OF AGENCY
1 3 Section 1. NEW SECTION. 535B.18 DUTY OF AGENCY.
1 4 1. A licensee acting in the capacity of a mortgage broker
1 5 pursuant to section 535B.1, subsection 5, shall be considered
1 6 to have created an agency relationship with the borrower in
1 7 all cases and shall perform all of the following duties:
1 8 a. Act in the borrower's best interest and in good faith
1 9 toward borrowers, and not compromise a borrower's right or
1 10 interest in favor of another person's right or interest,
1 11 including a right or interest of the licensee. A licensee
1 12 shall not accept, give, or charge any undisclosed compensation
1 13 or realize any undisclosed remuneration, either through direct
1 14 or indirect means, that inures to the benefit of the licensee
1 15 on an expenditure made for the borrower.
1 16 b. Carry out all lawful instructions provided or issued by
1 17 the borrower.
1 18 c. Disclose to a borrower all material facts of which the
1 19 licensee has knowledge which might reasonably affect the
1 20 borrower's rights, interests, or ability to receive the
1 21 borrower's intended benefit from the mortgage loan, but not
1 22 facts which are reasonably susceptible to the knowledge of the
1 23 borrower.
1 24 d. Use reasonable care in the performance of duties.
1 25 e. Account to the borrower for all the borrower's money
1 26 and property received as agent.
1 27 2. a. This section shall not be construed to prohibit a
1 28 licensee from contracting for or collecting a fee for services
1 29 rendered which was disclosed and agreed to by the borrower in
1 30 advance of the provision of such services.
1 31 b. This section shall not be construed as requiring a
1 32 licensee to obtain a loan for the borrower containing terms or
1 33 conditions not available to the licensee in the licensee's
1 34 usual course of business, or to obtain a loan for the borrower
1 35 from a mortgage lender with whom the licensee does not have a
2 1 business relationship.

2 2 DIVISION II
2 3 CONSUMER PROTECTIONS IN CERTAIN HOME LOANS
2 4 Sec. 2. NEW SECTION. 714C.1 DEFINITIONS.
2 5 As used in this chapter, unless the context otherwise
2 6 requires:
2 7 1. "Consumer home loan" means a loan, including a home
2 8 equity line of credit as defined in section 535.10, in which
2 9 the borrower is a natural person, the loan proceeds are to be
2 10 used primarily for personal, family, or household purposes,
2 11 and the loan is secured by a mortgage or deed of trust upon
2 12 residential real property as defined in section 535B.1.
2 13 Consumer home loan includes a loan used to purchase
2 14 residential real property and a refinancing of an existing
2 15 consumer home loan, but specifically excludes reverse mortgage
2 16 transactions.
2 17 2. "Flipping" or "churning" means making a consumer home
2 18 loan to a borrower which refinances an existing consumer home

2 19 loan when the new loan has no reasonable, net tangible benefit
2 20 to the borrower considering all of the circumstances,
2 21 including the terms of both the new and refinanced loans, the
2 22 total cost of the new loan, and the borrower's circumstances.
2 23 3. "Investment grade" means a system of categorizing
2 24 residential mortgage loans in which the loans are commonly
2 25 referred to as prime or subprime, commonly designated by an
2 26 alphabetical character with "A" being the highest investment
2 27 grade, and are distinguished by interest rate or discount
2 28 points or both charged to the borrower, which vary according
2 29 to the degree of perceived risk of default based on factors
2 30 such as the borrower's credit, income and employment history,
2 31 debt ratio, loan-to-value ratio, and prior bankruptcy or
2 32 foreclosure.
2 33 4. "Lender" means a person who makes a loan.
2 34 5. "Mortgage banker" means the same as defined in section
2 35 535B.1, and includes natural persons required to be registered
3 1 under section 535B.4A.
3 2 6. "Mortgage broker" means the same as defined in section
3 3 535B.1, and includes natural persons required to be registered
3 4 under section 535B.4A.
3 5 7. "Person" means the same as defined in section 535B.1.
3 6 8. "Reverse mortgage transaction" means a loan for a
3 7 definite or indefinite term secured by a first mortgage or
3 8 first deed of trust on the principal residence of the
3 9 mortgagor located in Iowa, the proceeds of which are disbursed
3 10 to the mortgagor in one or more lump sums, or in equal or
3 11 unequal installments, either directly by the lender or the
3 12 lender's agent, and that requires no repayment until a future
3 13 time, upon the earliest occurrence of one or more events
3 14 specified in the reverse mortgage loan contract such as the
3 15 sale of the property or the death of the borrower.
3 16 Sec. 3. NEW SECTION. 714C.2 CONSUMER PROTECTIONS.
3 17 In any consumer home loan, a lender, mortgage banker, or
3 18 mortgage broker shall not:
3 19 1. Fail to maintain a trust account to hold trust funds
3 20 received in connection with a residential mortgage loan.
3 21 2. Fail to deposit all trust funds into a trust account
3 22 within three business days of receipt; commingle trust funds
3 23 with funds belonging to the lender, mortgage banker, or
3 24 mortgage broker or another person; or use trust account funds
3 25 for any purpose other than that for which they are received.
3 26 3. Unreasonably delay the processing of a residential
3 27 mortgage loan application, or the closing of a residential
3 28 mortgage loan.
3 29 4. Fail to disburse funds according to contractual or
3 30 statutory obligations.
3 31 5. Fail to perform in conformance with written agreements
3 32 with borrowers, investors, or other lenders, mortgage bankers,
3 33 or mortgage brokers.
3 34 6. Charge a fee for a product or service where the product
3 35 or service is not actually provided, or misrepresent the
4 1 amount charged by or paid to a third party for a product or
4 2 service.
4 3 7. Violate any provision of any other applicable state or
4 4 federal law regulating residential mortgage loans.
4 5 8. Make or cause to be made, directly or indirectly, any
4 6 false, deceptive, or misleading statement or representation in
4 7 connection with a residential loan transaction including,
4 8 without limitation, a false, deceptive, or misleading
4 9 statement or representation regarding the borrower's ability
4 10 to qualify for any mortgage product.
4 11 9. Conduct residential mortgage loan business under any
4 12 name other than that under which a license was issued.
4 13 10. Compensate, whether directly or indirectly, coerce, or
4 14 intimidate an appraiser for the purpose of influencing the
4 15 independent judgment of the appraiser with respect to the
4 16 value of real estate that is to be covered by a residential
4 17 mortgage or is being offered as security according to an
4 18 application for a residential mortgage loan.
4 19 11. Issue any document indicating conditional
4 20 qualification or conditional approval for a residential
4 21 mortgage loan, unless the document also clearly indicates that
4 22 final qualification or approval is not guaranteed, and may be
4 23 subject to additional review.
4 24 12. Make or assist in making any residential mortgage loan
4 25 with the intent that the loan will not be repaid and that the
4 26 lender, mortgage banker, or mortgage broker will obtain title
4 27 to the property through foreclosure.
4 28 13. Provide or offer to provide for a borrower, any
4 29 brokering or lending services under an arrangement with a

4 30 person other than a lender, mortgage banker, or mortgage
4 31 broker, provided that a person may rely upon a written
4 32 representation by the lender, mortgage banker, or mortgage
4 33 broker, that it is in compliance with the licensing
4 34 requirements of chapter 535B.

4 35 14. Claim to represent a lender, mortgage banker, or
5 1 mortgage broker, unless the person is an employee of the
5 2 lender, mortgage banker, or mortgage broker or unless the
5 3 person has entered into a written agency agreement with the
5 4 lender, mortgage banker, or mortgage broker.

5 5 15. Fail to comply with applicable recordkeeping and
5 6 notification requirements or fail to abide by the affirmations
5 7 made on the application for licensure.

5 8 16. Make, provide, or arrange for a residential loan that
5 9 is of a lower investment grade if the borrower's credit score
5 10 or, if the lender, mortgage banker, or mortgage broker does
5 11 not utilize credit scoring or if a credit score is
5 12 unavailable, then comparable underwriting data, indicates that
5 13 the borrower may qualify for a residential mortgage loan,
5 14 available from or through the lender, mortgage banker, or
5 15 mortgage broker, that is of a higher investment grade, unless
5 16 the borrower is informed that the borrower may qualify for a
5 17 higher investment grade loan with a lower interest rate or
5 18 discount points, and consents in writing to receipt of the
5 19 lower investment grade loan.

5 20 17. Make, publish, disseminate, circulate, place before
5 21 the public, or cause to be made, directly or indirectly, any
5 22 advertisement or marketing materials of any type, or any
5 23 statement or representation relating to the business of
5 24 residential mortgage loans that is false, deceptive, or
5 25 misleading.

5 26 18. Advertise loan types or terms that are not available
5 27 from or through the lender, mortgage banker, or mortgage
5 28 broker on the date advertised, or on the date specified in the
5 29 advertisement. For purposes of this subsection,
5 30 "advertisement" includes but is not limited to a list of
5 31 sample mortgage terms, including interest rates, discount
5 32 points, and closing costs provided by lenders, mortgage
5 33 bankers, or mortgage brokers to a print or electronic medium
5 34 that presents the information to the public.

5 35 19. Use or employ phrases, pictures, return addresses,
6 1 geographic designations, or other means that create the
6 2 impression, directly or indirectly, that a lender, mortgage
6 3 banker, or mortgage broker is a governmental agency, or is
6 4 associated with, sponsored by, or in any manner connected to,
6 5 related to, or endorsed by a governmental agency, if that is
6 6 not the case.

6 7 20. a. Make, provide, or arrange for a residential loan
6 8 without verifying the borrower's reasonable ability to pay the
6 9 scheduled principal, interest, real estate tax, homeowner's
6 10 insurance, assessments, and mortgage insurance premium
6 11 payments. For loans in which the interest rate may vary, the
6 12 reasonable ability to pay shall be determined based on a fully
6 13 indexed rate and a repayment schedule which achieves full
6 14 amortization over the life of the loan. For all residential
6 15 mortgage loans, the borrower's income and financial resources
6 16 must be verified by tax returns, payroll receipts, bank
6 17 records, or other similarly reliable documents.

6 18 b. This subsection shall not be construed to limit the
6 19 ability of a lender, mortgage banker, or mortgage broker to
6 20 rely on criteria other than the borrower's income and
6 21 financial resources to establish the borrower's reasonable
6 22 ability to repay the residential mortgage loan; however, such
6 23 other criteria must be verified through reasonably reliable
6 24 methods and documentation. A statement by the borrower to the
6 25 lender, mortgage banker, or mortgage broker of the borrower's
6 26 income and resources is not sufficient to establish the
6 27 existence of the income or resources when verifying a
6 28 reasonable ability to pay.

6 29 21. Engage in flipping or churning.

6 30 22. Fail to disclose, when initially informing a borrower
6 31 of the anticipated or actual periodic payment amount for a
6 32 first-lien residential mortgage loan which does not include an
6 33 amount for payment of property taxes and hazard insurance, of
6 34 the additional amount attributable to these items. A lender,
6 35 mortgage banker, or mortgage broker need not make this
7 1 disclosure concerning a refinancing loan if the lender,
7 2 mortgage banker, or mortgage broker knows that the borrower's
7 3 existing loan that is anticipated to be refinanced does not
7 4 have an escrow account.

7 5 23. Make, provide, or arrange for a residential mortgage

7 6 loan, other than a reverse mortgage, if the borrower's
7 7 compliance with any repayment option offered pursuant to the
7 8 terms of the loan will result in negative amortization during
7 9 any six-month period.

7 10 Sec. 4. NEW SECTION. 714C.3 WAIVER PROHIBITED.

7 11 The terms of this chapter cannot be waived or modified by
7 12 contract or otherwise.

7 13 Sec. 5. NEW SECTION. 714C.4 EXEMPTION.

7 14 The provisions of this chapter shall not apply to federally
7 15 insured depository institutions.

7 16 Sec. 6. NEW SECTION. 714C.5 REMEDIES.

7 17 1. A violation of this chapter is an unlawful practice
7 18 pursuant to section 714.16, subsection 2, paragraph "a".

7 19 2. A borrower who suffers damage or injury as the result
7 20 of a practice which violates this chapter may bring an action
7 21 at law to recover actual damages. The court may order such
7 22 equitable relief as it deems necessary to protect the public
7 23 from further violations, including temporary and permanent
7 24 injunctive relief. In an action in which it is found that a
7 25 person has violated this chapter, the court shall award to the
7 26 borrower the costs of the action and to the borrower's
7 27 attorneys their reasonable fees. Reasonable attorney fees
7 28 shall be determined by the value of the time reasonably
7 29 expended by the attorney and not by the amount of the recovery
7 30 on behalf of the borrower. If the finder of fact finds that a
7 31 practice declared to violate this chapter is willful, in
7 32 addition to an award of actual damages, statutory damages of
7 33 up to three times the amount of actual damages may be awarded
7 34 to a prevailing borrower. Any claim under this chapter shall
7 35 be required to be proved by a preponderance of the evidence.

8 1 Sec. 7. NEW SECTION. 714C.6 APPLICABILITY OF OTHER LAW.

8 2 This chapter establishes specific consumer protections in
8 3 consumer home loans that are in addition to other consumer
8 4 protections that may be otherwise available under state or
8 5 federal law.

8 6 EXPLANATION

8 7 This bill confers upon licensed mortgage brokers a duty of
8 8 agency, and establishes consumer protection measures in
8 9 relation to certain home loans.

8 10 Division I of the bill provides that a mortgage broker
8 11 acting in the capacity of a mortgage broker pursuant to Code
8 12 section 535B.1, subsection 5, shall be considered to have
8 13 created an agency relationship with a borrower in all cases.
8 14 The bill specifies duties a mortgage broker shall perform
8 15 pursuant to the agency relationship, including acting in a
8 16 borrower's best interest and in good faith, not compromising a
8 17 borrower's right or interest in favor of another person or
8 18 mortgage broker, and not accepting, giving, or charging any
8 19 undisclosed compensation or realizing any undisclosed
8 20 remuneration that inures to the mortgage broker's benefit on
8 21 an expenditure made for the borrower. Additional duties
8 22 include carrying out all lawful instructions provided or
8 23 issued by a borrower, disclosing all material facts of which
8 24 the mortgage broker has knowledge which might reasonably
8 25 affect a borrower's rights, interests, or ability to receive
8 26 the intended benefit from the mortgage loan, but not facts
8 27 which are reasonably susceptible to the knowledge of a
8 28 borrower, using reasonable care in the performance of duties,
8 29 and accounting for all the borrower's money and property
8 30 received as agent.

8 31 The bill states that the duty of agency shall not be
8 32 construed to prohibit a mortgage broker from contracting for
8 33 or collecting a fee for services rendered which was disclosed
8 34 and agreed to by the borrower in advance of the provision of
8 35 the services, and shall also not be construed to require a
9 1 mortgage broker to obtain a loan for the borrower containing
9 2 terms or conditions not available to the mortgage broker in
9 3 the usual course of business, or to obtain a loan for the
9 4 borrower from a mortgage lender with whom the mortgage broker
9 5 does not have a business relationship.

9 6 A violation of these provisions subjects a mortgage broker
9 7 to the disciplinary provisions of Code chapter 535B, including
9 8 license suspension and revocation, and imposition of civil
9 9 penalties in an amount not to exceed \$5,000 per violation.

9 10 Division II of the bill prohibits or restricts a number of
9 11 potential actions by a lender, mortgage banker, or mortgage
9 12 broker provided in connection with a consumer home loan,
9 13 defined in the bill to include a home loan, equity line of
9 14 credit, and refinancing of an existing loan. The bill states
9 15 that the restrictions do not apply to federally insured
9 16 depository institutions. The bill provides that a lender,

9 17 mortgage banker, or mortgage broker shall not fail to maintain
9 18 a trust account to hold trust funds received in connection
9 19 with a residential mortgage loan; fail to deposit all trust
9 20 funds into a trust account within three business days of
9 21 receipt; commingle trust funds with funds belonging to the
9 22 lender, mortgage banker, or mortgage broker or another person;
9 23 or use trust account funds for any purpose other than that for
9 24 which they are received. A lender, mortgage banker, or
9 25 mortgage broker shall additionally not unreasonably delay the
9 26 processing or closing of a residential mortgage loan
9 27 application or loan; fail to disburse funds according to
9 28 contractual or statutory obligations; fail to perform in
9 29 conformance with written agreements with borrowers, investors,
9 30 or other lenders, mortgage bankers, or mortgage brokers;
9 31 charge a fee for a product or service where the product or
9 32 service is not actually provided, or misrepresent the amount
9 33 charged by or paid to a third party for a product or service;
9 34 violate any provision of any other applicable state or federal
9 35 law regulating residential mortgage loans; make or cause to be
10 1 made, directly or indirectly, any false, deceptive, or
10 2 misleading statement or representation in connection with a
10 3 residential loan transaction; conduct residential mortgage
10 4 loan business under any name other than that under which a
10 5 license was issued; compensate, whether directly or
10 6 indirectly, coerce, or intimidate an appraiser; or issue any
10 7 document indicating conditional qualification or conditional
10 8 approval for a residential mortgage loan, unless the document
10 9 also clearly indicates that final qualification or approval is
10 10 not guaranteed, and may be subject to additional review.
10 11 Further, the bill provides that a lender, mortgage banker,
10 12 or mortgage broker shall not make or assist in making any
10 13 residential mortgage loan with the intent that the loan will
10 14 not be repaid and that the lender, mortgage banker, or
10 15 mortgage broker will obtain title through foreclosure; provide
10 16 or offer to provide for a borrower, any brokering or lending
10 17 services under an arrangement with a person other than a
10 18 lender, mortgage banker, or mortgage broker; claim to
10 19 represent a lender, mortgage banker, or mortgage broker,
10 20 unless the person is their employee, or has entered into a
10 21 written agency agreement with the lender, mortgage banker, or
10 22 mortgage broker; fail to comply with applicable recordkeeping
10 23 and notification requirements or fail to abide by the
10 24 affirmations made on their licensing application; make,
10 25 provide, or arrange for a residential loan that is of a lower
10 26 investment grade under circumstances specified in the bill;
10 27 make, publish, disseminate, circulate, place before the
10 28 public, or cause to be made, directly or indirectly, any
10 29 advertisement or marketing materials of any type, or any
10 30 statement or representation relating to the business of
10 31 residential mortgage loans that is false, deceptive, or
10 32 misleading; advertise loan types or terms that are not
10 33 available from or through the lender, mortgage banker, or
10 34 mortgage broker on the date advertised or specified; or use or
10 35 employ phrases, pictures, return addresses, geographic
11 1 designations, or other means that create the impression,
11 2 directly or indirectly, that a lender, mortgage banker, or
11 3 mortgage broker is a governmental agency, or is associated
11 4 with, sponsored by, or in any manner connected to, related to,
11 5 or endorsed by a governmental agency, if that is not the case.
11 6 Also, the bill prohibits a lender, mortgage banker, or
11 7 mortgage broker from making, providing, or arranging for a
11 8 residential loan without verifying the borrower's reasonable
11 9 ability to pay; engaging in flipping or churning as defined in
11 10 the bill; failing to disclose when initially informing a
11 11 borrower of the anticipated or actual periodic payment amount
11 12 for a first-lien residential mortgage loan which does not
11 13 include an amount for payment of property taxes and hazard
11 14 insurance, of the additional amount attributable to these
11 15 items; and making, providing, or arranging for a residential
11 16 mortgage loan, other than a reverse mortgage, if the
11 17 borrower's compliance with any repayment option offered
11 18 pursuant to the terms of the loan will result in negative
11 19 amortization during any six-month period.
11 20 A borrower suffering damage or injury due to a violation of
11 21 these provisions may bring an action to recover actual
11 22 damages. In addition, a violation of these provisions
11 23 constitutes an unlawful practice under Code section 714.16,
11 24 with the remedy of injunctive relief and imposition of a civil
11 25 penalty of up to \$40,000 per violation.
11 26 LSB 6375HH 82
11 27 rn/nh/14

